

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

James Markovich,	)	
Charging Party,	)	HRC CASE NO. 0111014795
	)	
v.	)	
	)	FINAL AGENCY DECISION
James Hardie Building Products,	)	
Respondent.	)	

Charging Party, James Markovich (Markovich), filed a complaint with the Department of Labor and Industry (Department) alleging discrimination in employment on the basis of physical disability. Following an informal investigation, the Department's Human Rights Bureau determined that a preponderance of the evidence did not support Markovich's allegations that Respondent, James Hardie Building Products, discriminated against Markovich. The Department issued a Notice of Dismissal. Markovich filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on September 14, 2011. No oral argument was requested for this hearing.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Mont. Code Ann. § 49-2-511(2)*. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is not an abuse of discretion.

If a charging party chooses to commence a civil action in district court, the charging party has 90 days after the date this order is issued to file a complaint in district court, in the district where the alleged violation occurred, and seek appropriate relief. *Mont. Code Ann. § 49-2-511(3)(a)*. If a charging party fails to commence a civil action within 90 days, the claims are time barred. *Id.*

Alternatively, a party may ask a district court to review the decision of the Commission to affirm the dismissal of a complaint. *Mont. Code Ann. §§ 2-4-702 and 49-2-511(3)(b)*. This review must be requested within 30 days of the date of this order.

IT IS HEREBY ORDERED, that Markovich's objection is **overruled**. The Commission affirms the determination of the Human Rights Bureau to dismiss the complaint against James Hardie Building Products.

DATED this 30<sup>th</sup> day of September 2011.

A handwritten signature in cursive script, appearing to read "L.M. Minich", written in dark ink.

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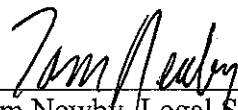
L.M. Minich, Chair  
Human Rights Commission

## CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 30<sup>th</sup> day of September 2011.

JAMES MARKOVICH  
5591 EXPLORER COURT  
LOLO, MT 59847

ESTHER KIM  
JAMES HARDIE BUILDING PRODUCTS  
LAW DEPARTMENT  
26300 LA ALAMEDA, SUITE 400  
MISSION VIEJO, CA 92691

  
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Tam Newby, Legal Secretary  
Montana Human Rights Bureau